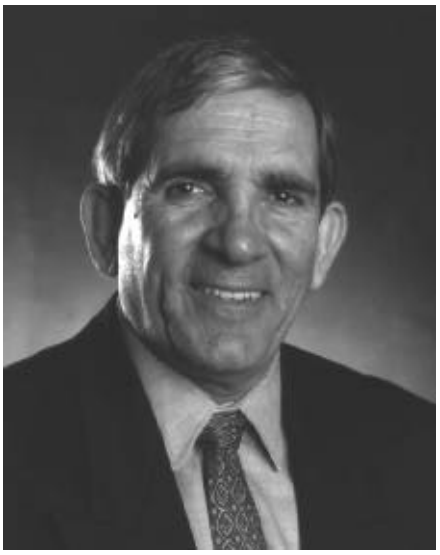

Speech by

Hon. J. FOURAS

MEMBER FOR ASHGROVE

Hansard 27 November 2001

CONSTITUTION OF QUEENSLAND; PARLIAMENT OF QUEENSLAND BILL

Hon. J. FOURAS (Ashgrove—ALP) (4.06 p.m.): I am pleased to join this debate, which has two purposes. The first is the consolidation and clarification of the legislation relating to the Queensland Constitution. The second is the consolidation of laws regarding the functioning of the Legislative Assembly. The history of the path to the privileges and independence of our parliament rests in understanding the role of the Speaker. The Speaker originally was a messenger from the parliament to the Crown. Progressively, Speakers decided that they needed to be there to protect the parliament. In the time of Charles I, Speaker Lenthal stood up to the king. That was the first recognition that the Speaker of the parliament was there to represent the interests of the people. I think a knowledge of our history is very important. We need to do more about civic education. Our Constitution is very largely unknown. We need to do something about that. We ought to be making more effort, as the Americans do, to help people understand how our Constitution works and how our parliaments work.

Our history is our roots. If you know where you have come from, you ought to know where you are going. It is interesting to understand how hard won were the privileges we have in this parliament. One has to go back to the time of Charles I, when parliamentary privilege was won through the blood and carnage of the English Civil War. The supremacy of the parliament was finally established in 1688 through the Bill of Rights of King William and Queen Mary. Since that time, the three pillars of parliamentary democracy in a free society have been parliament's privilege of free speech, the parliament's power of the purse and the parliament's sovereign power to make laws binding on the Crown and citizen alike. That is fundamental. The battles to achieve the privilege of free speech in the 17th century have a direct bearing on the Queensland parliament today.

Colonial legislatures, including Queensland, did not, by virtue of their ancestry, automatically inherit all the rights and privileges of the imperial parliament. The Parliamentary Privilege Act 1861 conferred upon the Queensland Legislative Assembly a restricted power to punish summarily for certain enumerated contempts. Later these provisions were transferred to the consolidated Constitution Act 1867. This act was amended in 1978 by the insertion of section 40A. That section provides that the powers, privileges and immunities of the Legislative Assembly, its members and committees are those defined by statute and, until defined by statute, are the same as those enjoyed by the House of Commons, its members and committees. As we understand, the Queensland parliament has not comprehensively defined its powers, privileges and immunities by statute. Therefore, in most cases when an abuse of privilege arises in Queensland, regard must be had to the precedents of the House of Commons.

An issue I want to address in relation to the large number of issues in these two bills is contempt. Contempt of parliament is the name given to offences against the House. Every breach of privilege is, strictly speaking, a contempt of parliament. The term 'contempt' includes any offence of the dignity of the House or interferences with its processes. The following are examples of matters held to be contempts by the House of Commons: premature publication of reports of select committees, attempts to influence members in their parliamentary conduct by bribes or threats, speeches or writing defamatory of the House or particular members of the House in respect of their conduct as members—and it will be interesting to see how the media treats that one today—and deliberately misleading the House or a committee.

The Constitution Act of 1867 does three important things in relation to contempt of parliament in Queensland. Actually, it empowers the parliament to deal with a number of specified contempts by way of fine, allows the Speaker to issue warrants and enables the Legislative Assembly to refer a contempt to the Attorney-General to be prosecuted by the Supreme Court. Section 2 of the Parliament of Queensland Bill deals with contempts. It provides definitions of the meaning of contempt of the Assembly and gives examples such as assaulting or obstructing or insulting members, sending a challenge to fight a member, sending a threat to a member, offering a bribe—and they are specifically mentioned—and the processes of how the Legislative Assembly can deal with this contempt are fully set out in a much clearer way in the parliament. It should be noted, of course, that section 39(1) provides that—

The Assembly has the same power to deal with a person for contempt of the Assembly as the Commons House of the Parliament of the United Kingdom had at the establishment of the Commonwealth to deal with contempt of the House of Commons.

That is as of 1 January 1901; it is an ever-changing feast. This is the situation. Further, section 47 (1), 'Other proceedings', provides—

If a person's conduct is both a contempt of the Assembly and an offence against another Act, the person may be proceeded against for the contempt or for the offence against the other Act, but the person is not liable to be punished twice for the same offence.

(2) The Assembly may, by resolution, direct the Attorney-General to prosecute a person for the offence against the other Act.

It should also be noted that the Criminal Code provides offences for a number of actions which may also constitute a contempt of parliament. It is interesting to read comments about how the media see the powers exercised by this parliament; the powers to fine and to jail. In the *Adelaide Law Review* in 1984, Sally Walker stated—

The powers which may be exercised by Australian Houses of parliament are not insignificant and contempt of parliament is a source of potentially arbitrary power which is subject to little supervision by the courts. Hence, despite the fact that houses of parliament rarely exercise their powers, journalists are justified in perceiving contempt of parliament as a source of restraint on their freedom to inform.

It is worth while noting these comments and it is my view that the powers of parliament to deal with contempt should be strictly limited to self-preserving powers. For example, while it is contempt to publish prematurely reports of select committees, the issue is that the public has the right to know, and one must understand that that is the way the media sees it. The public has a right to know. Although it is unethical for a member to leak a report, it is not such a serious matter that the public knows about it, and I do not think that it interferes with the working of parliament at all. It is important that we note that. There are a large number of issues.

I am pleased that this bill brings together laws regarding the Legislative Assembly and sets out the functions of Speakers and committees et cetera. I am pleased to see that we are halfway to making sure that our Constitution and some of our workings here are much more contemporary. I commend this bill to the House.